IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 870 of 2004 (M/S)

Smt. Sundari Devi …… Petitioner

Versus

District Judge
Udham Singh Nagar & others …… Respondents

Mr. Rakesh Thapliyal, learned counsel for the petitioner.
Mr. Subhash Upadhyaya, learned Brief Holder for the State.

Hon'ble P.C. Pant, J.

Heard.

This petition has been moved under Article 227 of the Constitution of India and directed agasint the order dated 20.08.2004 passed by the learned District Judge, Udham Singh Nagar and order dated 25.03.2003 passed by learned Additional Civil Judge (Sr. Division) Kashipur, whereby in civil suit No. 37 of 1994 both the Courts below have refused to decide the issue relating to Section 10 C.P.C. for staying the suit on the ground that the same issue has been disposed of earlier on the plea raised by the husband of the petitioner, in negative.

The annexures filed to this petition show that the petitioner after getting herself impleaded as defendant, raised the issue which was already disposed of on the plea raised by her husband. From the annexures it is also clear that earlier also the issue relating to Section 10 of C.P.C. was also challenged before the revisional Court and the revisional Court agreed with the view taken by the Court below.

The scope of Article 227 is of limited revisional jurisdiction and in the opinion of this Court it cannot be used as a tool to delay the proceedings that too of a ten year's old suit. Therefore, in view of the principle of law laid down in Kamleshwar Prasad V. P. Agrawal (1997) 4 Supreme Court Cases 413, this Court is not inclined to interfere with the concurrent findings of the Court's below in these proceedings. The petition under Article 227 is dismissed summarily at the stage of admission.

(Prafulla C. Pant, J.)

Dt. 23.09.2004
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